

RECEIVED

March 18, 1994

MAR 31 1994

FCC - MAIL ROOM

Office of the Secretary
Federal Communications Commission
1919 M St., N.W.
Room 222
Washington, DC 20036

RE: KWEO(FM) c.p.
Garberville, CA
BMPH-930827IE
Petition For Rule Making

RM-8411

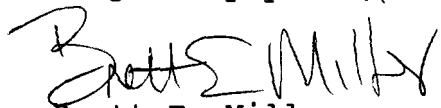
MAR 31 10 29 AM '94
FCC/ICES

Dear Sir/Madame:

Submitted herewith is an original and three copies of a Petition For Rule Making requesting a change in city of license for the above-referenced construction permit.

If there are any questions, please contact this office.

Very truly yours,



Brett E. Miller
11608 Blossomwood Ct.
Moorpark, CA 93021
(805) 523-7312

BEM/tbh

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the matter of) KWEQ(FM) c.p.
) Garberville, CA
Amendment of Section 73.202(b)) BMPH-930827IE
Table of Allotments)
FM Broadcast Stations)
(Garberville and Hydesville, CA)

RECEIVED

MAR 31 1994

RM-8464

FCC - MAIL ROOM

To: Chief, Policy and Rules Division

PETITION FOR RULE MAKING

1. Brett E. Miller, permittee of KWEQ(FM), Garberville, California ("Petitioner"), pursuant to Section 1.401, Section 1.420(g)(3), and Section 1.420(i)1 of the Commission's Rules, respectfully submits this Petition for Rule Making to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

	<u>Present</u>	<u>Proposed</u>
Garberville, CA	279C-1	-----
Hydesville, CA	-----	279C-1

2. The coordinates for this proposed allotment to Hydesville are 40 degrees, 32 minutes, 52 seconds North Latitude and 124 degrees, 05 minutes, 46 seconds West Longitude. See Exhibit No. 1.

PRELIMINARY STATEMENT

3. The allocation reference point in this petition meets the minimum distance separation requirements set forth in Section 73.207 of the Commission's Rules. See Exhibit No. 2. The change

of community of license can be made in the course of this rule making since the proposed modification will occur on a mutually exclusive co-channel. See Section 1.420(g)(3) and (i) of the Commission's Rules.

4. The change in allotment will not deprive Garberville of its only local aural or FM service and will result in the "net service benefit for the affected communities". Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License ("Modification of Community of License"), 4 FCC Rcd 4870, 4874 (1989). Thus, Petitioner proposal is in accord with the Commission's policy on changes in community of license.

Discussion

I. HYDESVILLE, CA IS A "COMMUNITY" FOR ALLOTMENT PURPOSES

5. The statute requires the FCC to allot FM channels in a fair distribution among the Nation's "communities". See 47 U.S.C. 307(b). Historically, the FCC has considered any incorporated or census-designated place as a "community" for allotment purposes. The U.S. Census Bureau has designated Hydesville, CA as a "census designated place". Census designated places ("CDP") are delineated for the decennial census as the statistical counterparts of incorporated places. CDP's comprise densely settled concentrations of population that are identifiable by name, but are not legally incorporated places. See FM Channel Policies/Procedures, 90 FCC 2d 88, 101 (1982).

II. THE PROPOSAL WILL RESOLVE TECHNICAL CONCERNS EXPRESSED BY THE FCC

6. The currently approved tower location on Pratt Mountain is situated in very close proximity to a California Department of Forestry fire lookout tower. In the past, this same fire lookout tower has been a source of controversy concerning the effects of radiofrequency radiation from other facilities at the site. Indeed, the current construction permit is conditional such that the automatic program test provisions of 47 C.F.R. Section 73.1620 do not apply and other reporting and documentation must be provided regarding RF field strengths.

7. Petitioner's engineering studies have been unable to remove doubt that the proposed construction would result in acceptable RF field strengths at the fire lookout site.

8. This proposal will resolve these technical concerns. Certification has already been obtained for an established tower site where such RF problems would not exist.

III. THE PROPOSAL WILL RESULT IN A PREFERENTIAL ARRANGEMENT OF ALLOTMENTS

9. Petitioner's proposal meets the Commission's requirement for a "preferential arrangement of allotments." See Modification of Community of License, supra, 4 FCC Rcd at 4873. Id. Hydesville, CA, will gain its first local broadcast service as a result of this proceeding. Provision of first local service is accorded the highest priority in FM allocation proceedings. See Revision of FM Assignments, Policies and Procedures, 90 FCC 2d 88,

90-92 (1982). Moreover, Garberville, CA will continue to have local aural transmission service from KBEY(FM) and KMUD(FM) both of which are licensed to Garberville, CA.

10. A study was undertaken to determine whether any other Class C1 channels could be allotted to Garberville should an expression of interest be received. The results of the study showed that at least two other Class C1 channels, 275C1 and 292C1, could be allotted to Garberville with slight site restrictions.

CONCLUSION

11. For the foregoing reasons, Petitioner respectfully requests that the commission issue a Notice of Proposed Rule Making proposing the change of community of license from Garberville, CA to Hydesville, CA and the modification of Petitioner's construction permit to specify operation on Channel 279C1 at Hydesville, CA. In the event this petition is ultimately granted, the permittee will file an application for a construction permit for the facilities proposed herein and promptly construct the facilities when such authorization is granted.

Respectfully submitted,



Brett E. Miller
11608 Blossomwood Ct.
Moorpark, CA 93021
(8050 523-7312

March 18, 1994

CERTIFICATION

1. I, Brett E. Miller, certify that I am not subject to a denial of Federal benefits including FCC benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.

2. I, Brett E. Miller, certify that the information contained in the foregoing Petition For Rule Making dated as of March 18, 1994, is true and accurate to the best of my knowledge.

Respectfully submitted,

A handwritten signature in cursive script that reads "Brett E. Miller". The signature is written in dark ink and is positioned above a horizontal line.

Brett E. Miller
11608 Blossomwood Ct.
Moorpark, CA 93021
(805) 523-7312

ENGINEERING EXHIBITS IN SUPPORT OF PETITION FOR RULE MAKING

March 15, 1994

Radio Station KWEO(FM)
Brett E. Miller
FM Channel 279C1 □ 103.7 Megahertz
Hydesville, California



LAWRENCE L. MORTON ASSOCIATES
1231 MESA OAKS LANE
MESA OAKS, CALIFORNIA 93438-2308
(805) 733-4275 / FAX (805) 733-4793

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| E-3 | Map Showing Distribution of 1990 U.S. Census Blocks Within Area Surrounding Hydesville |
| E-4 | Map Showing KWEO(FM) Authorized 60 dBμ F(50,50) Service Contour Computed Along 360 Bearings |
| E-5 | Map Showing KWEO(FM) 60 dBμ F(50,50) Service Contour Computed Along 360 Bearings From Class C1 Hypothetical Fully Spaced Site Near Hydesville |
| E-6 | 1990 U.S. Census Demographics For Area Within KWEO(FM) Authorized 60 dBμ Service Contour |
| E-7 | 1990 U.S. Census Demographics For Area Within KWEO(FM) Hypothetical Class C1 60 dBμ Service Contour From Fully Spaced Site Near Hydesville |

EXHIBIT E-1 ENGINEERING STATEMENT

The information and data contained within these Engineering Exhibits were prepared on behalf of Brett E. Miller, permittee of FM broadcast station KWEO(FM), 103.7 Megahertz, Channel 279C1, in support of a petition for rule making. The petitioner proposes to amend the FM Table of Allotments, 47 C.F.R. § 73.202(b) of the Commission's Rules, by changing the allotment of Channel 279C1 from Garberville to Hydesville, California. The petitioner also requests that the KWEO(FM) authorization be changed to specify operation on Channel 279C1 at Hydesville.

I. HYDESVILLE, CALIFORNIA

The community of Hydesville is located in central Humboldt County in the northwestern portion of the State of California. Currently, Hydesville has no aural broadcast service.

The United States Geological Survey centroid geographical coordinates of Hydesville are:

North Latitude: 40 degrees, 32 minutes, 52 seconds
West Longitude: 124 degrees, 05 minutes, 46 seconds

Hydesville, a Census Designated Place, has a population of 1,131 residents. Within a five-kilometer radius of the center of Hydesville there is a population of 5,842 persons, and 16,155 persons reside within a ten-kilometers radius.

II. IMPROVEMENT TO SERVICE AREA OF KWEO(FM)

The proposed allotment of Channel 279C1 at Hydesville, California, requires a site restriction of 19.7 kilometers south of the center of Hydesville to avoid a short-spacing with I.F.-related Class C station KXGO(FM), licensed to Arcata, California. The petitioner has identified a hypothetical transmitter site that complies with the Commission's spacing requirements. The geographical coordinates of this reference site are:

North Latitude: 40 degrees, 23 minutes, 00 seconds
West Longitude: 124 degrees, 11 minutes, 00 seconds

From such a site, it is possible to place a requisite 70 dB μ or greater signal strength across Hydesville in compliance with § 73.315(a).

KWEO(FM), BMPH-930827IE, is authorized to operate on Channel 279C1 with an effective radiated power ("ERP") of 8.0 kW and an antenna height above average terrain ("HAAT") of 790 meters. The KWEO(FM) authorized 60 dB μ F(50,50) service contour encompasses an area of 15,961 square kilometers containing a 1990 Census population of 41,093. The KWEO(FM) service area is shown cartographically in exhibit E-4 and the demographics of the 1990 Census population within the contour are shown in exhibit E-6.

By granting this petition and permitting KWEO(FM) to serve Hydesville at the proposed reference site, the Commission would enable the petitioner to increase substantially the number of persons within the KWEO(FM) service area. The predicted 60 dB μ contour would encompass an area of 16,784 square kilometers containing a 1990 Census population of 111,153 persons. This results in a population increase of over 170 percent. These population figures are based on results of the 1990 U.S. Census evaluated at the block level. The 60 dB μ service contour from the hypothetical fully spaced Class C1 Hydesville facility is shown in exhibit E-5 and the 1990 Census demographics for the population within the contour are tabulated in exhibit E-7. Portions of the areas contained within the aforementioned contours lie over the Pacific Ocean, however, no adjustments have been made for this in the stated contour-encompassed areas.

III. ALTERNATE CHANNELS AT GARBERVILLE

A study was undertaken to determine whether any other Class C1 channels could be allotted to Garberville should an expression of interest be received. The results of the study showed that at least two other Class C1 channels, 275C1 and 292C1, could be allotted to Garberville with slight site restrictions.

IV. MINIMUM SPACING REQUIREMENTS

The following table shows a listing of the nearest licensed facilities and allocations currently on file with the required distance separations for Channels 279C1. For clarity, facilities that are greater than 300 kilometers beyond the minimum required separations are not shown.

As required by § 73.207 all minimum distance separation requirements are met from the hypothetical reference site. All distances were computed by the methods outlined in § 73.208(c) of the Commission's Rules and were rounded to the nearest kilometer in accordance with § 73.208(c)(8).

ALLOCATION-PERTINENT STATIONS AND SPACING REQUIREMENTS OF § 73.207					
CALL LETTERS	CHANNEL CLASS	LATITUDE	LONGITUDE	ACTUAL DISTANCE	REQUIRED DISTANCE
KVVV	225-B	38° 45' 45"	122° 50' 24"	214. Km	27. Km
KXGO	226-C	40° 43' 36"	123° 58' 19"	42	41
KRSB-FM	276-C2	43° 13' 59"	123° 19' 22"	324	79
KKCY	276-A	39° 12' 21"	121° 49' 11"	241	75
KUKI-FM	277-B	39° 19' 36"	123° 16' 12"	141	79
KOPE	278-C1	42° 17' 10"	123° 00' 21"	233	177
KHSL-FM	278-B1	39° 57' 29"	121° 42' 50"	216	161
KODS	279-C1	39° 18' 38"	119° 53' 01"	386	245
KWEO ¹	279-C1	40° 07' 13"	123° 41' 32"	50.98	245
KKSF	279-B	37° 45' 20"	122° 27' 05"	328	270
KXPC	279-C	44° 30' 20"	122° 57' 38"	469	270
KXCL	280-B1	39° 12' 20"	121° 49' 10"	241	161
KYRE	280-C1	41° 36' 34"	122° 37' 29"	189	177
KHOP	281-B	37° 39' 10"	121° 28' 38"	383	79
ALLOC	281-A	38° 36' 37"	122° 53' 12"	226	75
KSHA	282-C	40° 39' 14"	122° 31' 12"	144	105

V. CONCLUSIONS

From this study it has been determined that the FM Table of Allotments of § 73.202(b) of the Commission's Rules may be amended with technical compliance of all applicable Rules. The petitioner, Brett E. Miller, respectfully requests the following changes to the Table:

PRESENT

COMMUNITY

Garberville, CA

Hydesville, CA

CHANNEL

279C1, 284C

¹ Authorized Class C1 facility of KWEO(FM) at Garberville, California.

PROPOSED

<u>COMMUNITY</u>	<u>CHANNEL</u>
Garberville, CA	284C
Hydesville, CA	279C1

The petitioner further requests that its authorization for KWEO(FM) be modified to specify operation on Channel 279 with Class C1 facilities at Hydesville, California. Upon allotment of Channel 279C1 to Hydesville, Brett E. Miller, promptly will file an application for construction permit for Class C1 facilities for KWEO(FM), accordingly.

It is believed that all methods employed in making the determinations contained within this Engineering Statement were in accordance with applicable F.C.C. Rules and Regulations and good engineering practice.

Respectfully Submitted,

Lawrence L. Morton, P.E.
Consulting Engineer to the Petitioner
March 15, 1994

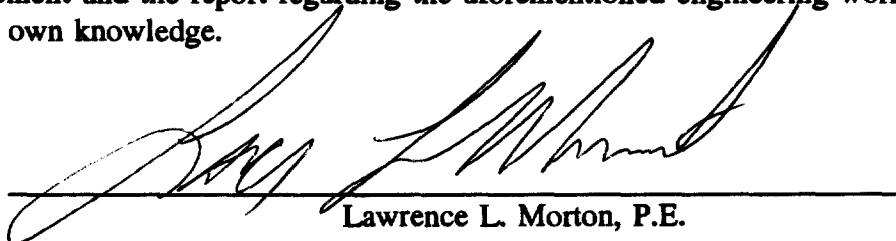
AFFIDAVIT

State of California)
) ss:
County of Orange)

Lawrence L. Morton, being first duly sworn upon oath, deposes and says:

- That he is a qualified engineer,
- That he is a Registered Professional Engineer in the State of California,
- That he is a member of the Association of Federal Communications Consulting Engineers,
- That his qualifications are a matter of record with the Federal Communications Commission,
- That he has prepared many broadcast applications and engineering exhibits that have been filed with and granted by the Federal Communications Commission,
- That he has carried out such engineering work and that the results thereof are attached hereto and form part of this affidavit, and
- That the foregoing statement and the report regarding the aforementioned engineering work are true and correct of his own knowledge.

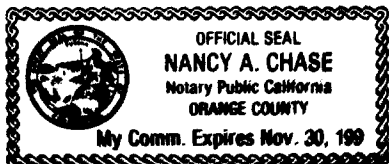
Date: March 15, 1994


Lawrence L. Morton, P.E.

On March 15, 1994, before me, Nancy A. Chase, a Notary Public, in and for the State of California, personally appeared Lawrence L. Morton known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

My Commission expires 11/30/94


Nancy A. Chase
Notary Public



Lambert Azimuthal Equal-Area

10' 00" Graticule Spacing

PACIFIC

OCEAN

KYRE(FM) 177 KM RADIUS

KXGO(FM) 41 KM RADIUS

CHANNEL 279C1 REFERENCE SITE

FULLY SPACED AREA TO LOCATE CHANNEL 279C1

CENTER OF MAP:

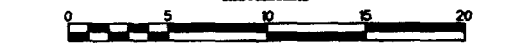
N LAT 40 23' 00.00"
W LON 124 11' 00.00"

Scale 1 : 380,160

EXHIBIT E-2

FULLY SPACED AREA TO LOCATE
CHANNEL 279C1
HYDESVILLE, CALIFORNIA

KILOMETERS



STATUTE MILES



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Mesa Oaks, California

Lambert Azimuthal Equal-Area

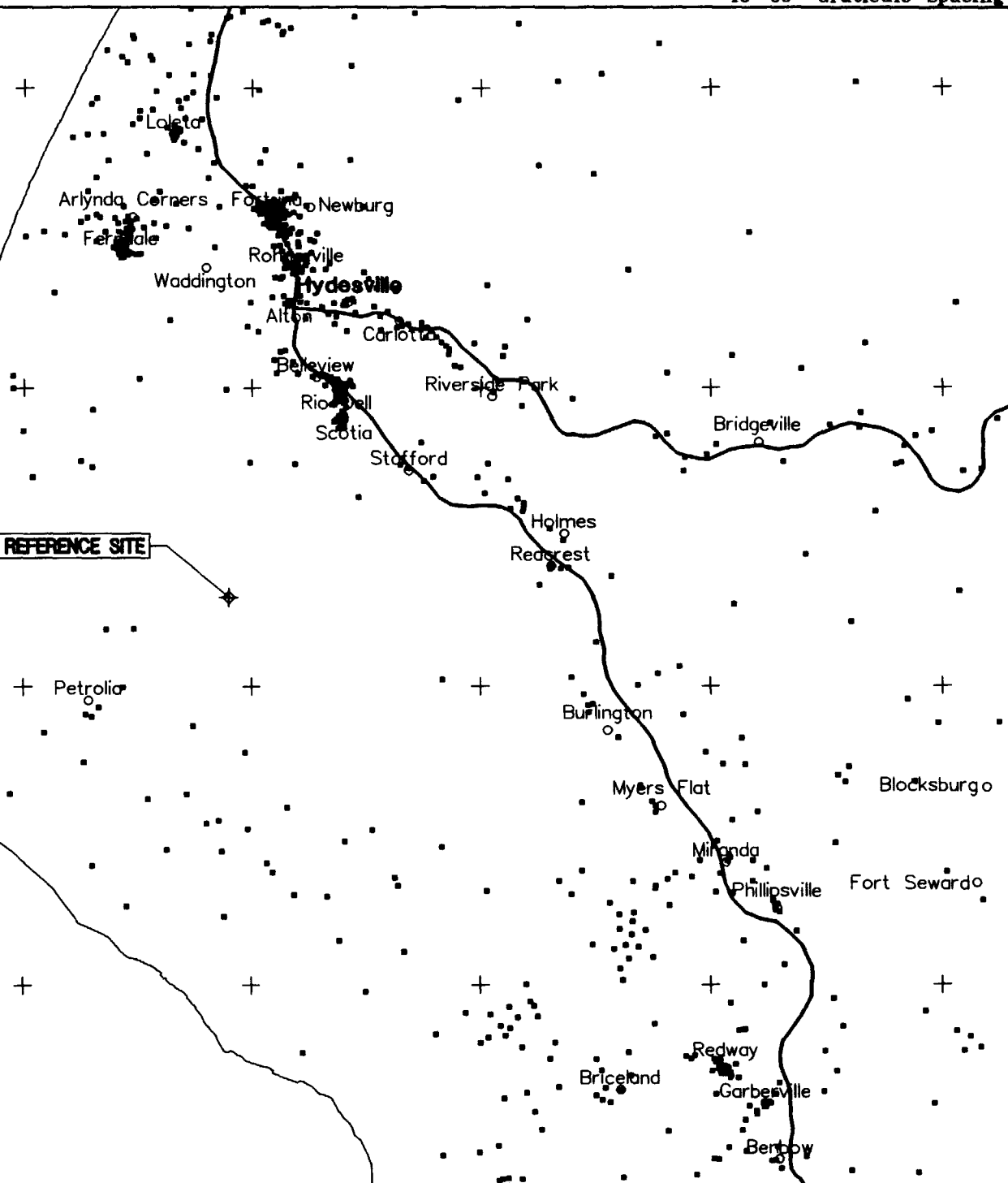
10' 00" Graticule Spacing

PACIFIC

OCEAN

CHANNEL 279C1 REFERENCE SITE

CENTER OF MAP:		EXHIBIT E-3 DISTRIBUTION OF 1990 CENSUS BLOCKS WITHIN THE VICINITY OF HYDESVILLE, CALIFORNIA
N LAT	40 23' 00.00"	
W LON	124 11' 00.00"	
Scale 1 : 380,160		
LAWRENCE L. MORTON ASSOCIATES Telecommunications Engineers Mesa Oaks, California		



Lambert Azimuthal Equal-Area

30' 00" Graticule Spacing

PACIFIC

AREA WITHIN 60 DBU CONTOUR: 15,961 SQ KM

KWEO(FM) 60 DBU CONTOUR

OCEAN

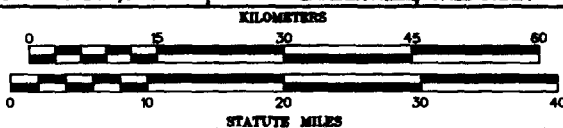
CENTER OF MAP:

N LAT 40 06' 50.00"
W LON 123 50' 00.00"

Scale 1 : 887,040

EXHIBIT E-4

KWEO(FM) BHPH-630827E SERVICE CONTOUR
FROM AUTHORIZED SITE
GARBERVILLE, CALIFORNIA



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Mesa Oaks, California

1990 POPULATION WITHIN 60 DBU CONTOUR: 41,093

Lambert Azimuthal Equal-Area

30' 00" Graticule Spacing

AREA WITHIN 60 DBU CONTOUR: 16,784 SQ KM

KWEO(FM) 60 DBU CONTOUR FROM FULLY SPACED SITE

PACIFIC
OCEAN

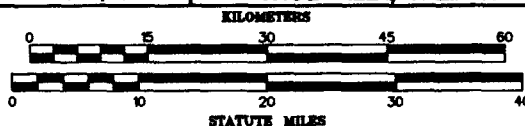
CENTER OF MAP:

N LAT 40 23' 10.00"
W LON 124 30' 00.00"

Scale 1 : 950,400

EXHIBIT E-5

KWEO(FM) 60 DBU SERVICE CONTOUR
FROM CLASS C1 HYPOTHETICAL
FULLY SPACED FACILITY AT
HYDESVILLE, CALIFORNIA



LAWRENCE L. MORTON ASSOCIATES
Telecommunications Engineers
Mesa Oaks, California

1990 POPULATION WITHIN 60 DBU CONTOUR: 111,153

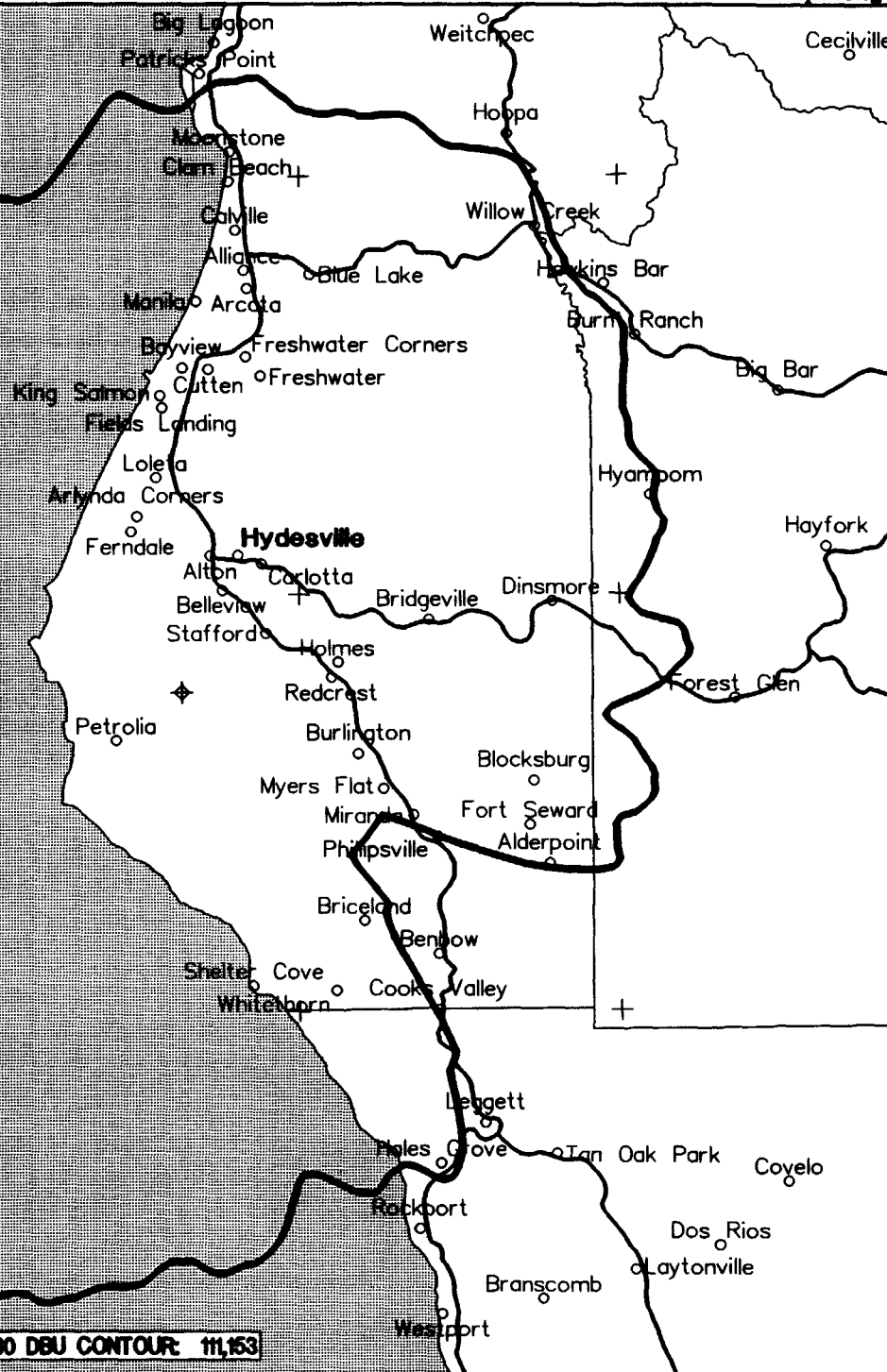


EXHIBIT E-6
1990 U.S. CENSUS DEMOGRAPHICS
WITHIN KWEO(FM) AUTHORIZED 60 dB μ SERVICE CONTOUR
 Brett E. Miller
 March 1994

DEMOGRAPHICS	POPULATION WITHIN 60 dB μ CONTOUR	
	TOTAL	PERSONS 18+ YEARS
TOTAL POPULATION	41,093	29,783
RACE		
White	38,077	27,892
Black	220	157
American Indian, Eskimo or Aleutian	2,018	1,252
Asian or Pacific Islander	300	173
Other	478	309
HISPANIC ORIGIN AND RACE		
Hispanic	1,798	1,070
NOT OF HISPANIC ORIGIN		
White	36,871	27,177
Black	212	151
American Indian, Eskimo or Aleutian	1,895	1,200
Asian or Pacific Islander	291	168
Other	26	17
TOTAL HOUSING UNITS	19,492	
CENSUS BLOCKS COUNTED	1,330	
AREA IN SQUARE KILOMETERS	15,961.224	
AREA IN SQUARE MILES	6,162.663	

EXHIBIT E-7
1990 U.S. CENSUS DEMOGRAPHICS
WITHIN KWEO(FM) HYDESVILLE 60 dB μ SERVICE CONTOUR

Brett E. Miller
March 1994

DEMOGRAPHICS	POPULATION WITHIN 60 dB μ CONTOUR	
	TOTAL	PERSONS 18+ YEARS
TOTAL POPULATION	111,153	82,967
RACE		
White	102,425	77,503
Black	908	608
American Indian, Eskimo or Aleutian	4,219	2,640
Asian or Pacific Islander	2,277	1,313
Other	1,324	903
HISPANIC ORIGIN AND RACE		
Hispanic	4,680	2,991
NOT OF HISPANIC ORIGIN		
White	99,382	75,561
Black	883	592
American Indian, Eskimo or Aleutian	3,917	2,502
Asian or Pacific Islander	2,219	1,275
Other	72	46
TOTAL HOUSING UNITS	47,305	
CENSUS BLOCKS COUNTED	2,307	
AREA IN SQUARE KILOMETERS	16,783.842	
AREA IN SQUARE MILES	6,480.277	